

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
:
SAFANI GALLERY, INC., :
:
Plaintiff, :
: 19-CV-10507 (VSB)
- against - :
:
THE ITALIAN REPUBLIC, :
:
Defendant. :
:
-----X

ORDER

VERNON S. BRODERICK, United States District Judge:

This order is being issued in response to Plaintiff's letter, filed March 31, 2022, "seek[ing] . . . confirmation . . . that service on [Defendant] MiBACT is to be held in abeyance until after the Court considers and rules on Italy's futility arguments." (Doc. 80.) Familiarity with the contents of Plaintiff's March 31, 2022 and the procedural history of this action will be presumed.

For clarification, my December 6, 2021 Order granted Plaintiff leave "to file the Second Amended Complaint" ("SAC") and reserved judgment on arguments testing the SAC's sufficiency until such time as newly named Defendant "the Manhattan DA appears in this action and files papers responding to the Second Amended Complaint." (Doc. 63.) Plaintiff then did file the SAC. (Doc. 66.) The SAC is thus currently the operative pleading in this action, and it already names MiBACT as a Defendant. (*See id.*) I never previously took any view as to the timeframe for which Plaintiff must serve MiBACT.

However, I agree that Plaintiff may wait to serve MiBACT until after I resolve the arguments of Italy and the Manhattan DA testing the sufficiency of the SAC. Plaintiff is correct to note that Italy has argued that suing "MiBACT" is "akin to suing [Italy] twice, since

[MiBACT's] relevant actions are wholly governed by Italy.” (Doc. 53, at 12 (*cited in Doc. 80*)).

Italy has also made arguments as to why the SAC cannot proceed passed the pleading stages against either itself or MiBACT. (*See id.* at 13–19.)

Accordingly, all the arguments necessary to testing whether the SAC would survive a motion to dismiss made by MiBACT are already before me. Because of this, if I determine that the SAC is sufficiently pleaded to allow this action to proceed passed the pleading stages, I will likely not allow MiBACT to make its own Rule 12 motion challenging the SAC, since I will have already determined as law of the case that MiBACT is susceptible to suit as pleaded by the SAC.

SO ORDERED.

Dated: April 7, 2022
New York, New York



Vernon S. Broderick
United States District Judge